

SEP 12 2005

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**FACSIMILE TRANSMISSION****DATE:** September 12, 2005**MATTER NUMBER:**UTSD:681USC1 /  
10400477

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Commissioner for Patents U.S. Patent and Trademark Office	(571) 273-8300	

**FROM:** Robert E. Hanson**USER ID:** RH10056 **FLOOR:** 20**PHONE:** (512) 536-3085**FAX:** (512) 536-4598**RE:** SN 10/767,412**NUMBER OF PAGES WITH COVER PAGE:** 5 **Originals Will Not Follow****Message:**

Submitted for filing in Application Serial No. 10/767,412 is a Response to Restriction Requirement.

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SEP 12 2005

PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:  
Stephen A. Johnston, et al.

Serial No.: 10/767,412

Filed: September January 29, 2004

For: EXPRESSION LIBRARY  
IMMUNIZATION

Group Art Unit: 1639

Examiner: Sue Liu

Atty. Dkt. No.: UTSD:681USC1

CERTIFICATE OF FACSIMILE TRANSMISSION  
37 C.F.R. § 1.8

I certify that this correspondence is being transmitted to:  
Commissioner for Patents, P.O. Box 1450, Alexandria, VA  
22313-1450, facsimile number (571) 273-8300 on the date  
below:

September 12, 2005  
Date

  
Robert E. Hanson**RESPONSE TO RESTRICTION REQUIREMENT**

Mail Stop Amendment  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This paper is submitted in response to the Restriction Requirement dated August 10, 2005, for which the date for response is September 12, 2005, pursuant to 37 C.F.R. §1.7.

It is believed that no fee is due in connection with this paper; however, should any fees under 37 C.F.R. §§ 1.16 to 1.21 be required for any reason relating to this document, the Commissioner is authorized to deduct said fees from Fulbright & Jaworski L.L.P. Account No.: 50-1212/UTSD:681USC1.

In response to the restriction requirement which the Examiner imposed, applicants elect, with traverse, to prosecute claims 41-63 in part, *i.e.*, the Group I claims.

Applicants respectfully traverse on the basis that Group II is generically linked to Group I, as the antigen according to Group II is encoded by the nucleic acid according to Group I as stated in claim 41(a)(i) and following. Applicants therefore respectfully assert that the claims are functionally related in that the antigen is administered using the same steps and/or reagents as the administration of the nucleic acid, and produces the same results as the expressed nucleic acid(s). Because administration of the antigen of Group II according to the claimed method requires administration of the nucleic acid of Group I, there would be no undue burden to search both groups together, and restriction is improper.

In a restriction requirement, the presence of generic linking claims should be stated on the record. M.P.E.P. §814. The linked claims "must be examined with any one of the linked inventions that may be elected." *Id.* Claim 41 links all of the pending claims and therefore Applicants respectfully request that this be indicated on the record and that all of the claims be examined.

In response to the election of species requirement, applicants traverse in part. Applicants note that for species group, F, related to a promoter used for expression in a mammalian cell, no specific species were claimed, and thus the requirement for election appears improper. Likewise, for species set G, no specific species of signal sequence was claimed, and the species requirement is also believed to be improper. Applicants respectfully request that the requirement with respect to these species be removed.

Applicants elect the following species for examination, with traverse: in Group A: species of animal: mouse; in Group B: species of subject: human; in Group C: species of

pathogen: bacterial cell, in particular *Mycoplasma pulmonis*; in Group D: host cell: bacterial cell, in particular *E. coli*; in Group E: fusion protein: human growth hormone; in Group F: promoter: CMV; in Group G: signal sequence: hGh; in Group H: DNA fragment size: about 400 bp.

Applicants respectfully submit that: Claims 41, 48, 54-59 and 62-63 are generic to all of the species sets A-H. In addition: claims 42-44 are generic to species set C; claim 45 is generic to species set D; claims 51-53 are generic to species set E; claim 60 is generic to species set F; claim 61 is generic to species set G and claim 49 is generic to species set H. All of the claims read on all of the elected species with the exception that claim 46 does not read on the elected species of D.

Pursuant to the election of species requirement, applicants note that each of the species identified are linked by at least one generic linking claim. M.P.E.P. §809. Pursuant to 37 C.F.R. §1.141 and §1.146, applicants are entitled to entry and consideration of all species upon the allowability of a generic linking claim. Applicants hereby specifically request such action.

**CONCLUSION**

In view of the foregoing, applicants respectfully request removal of the Restriction Requirement. The Examiner is invited to contact the undersigned attorney at (512) 536-3085 with any questions or comments relating to the referenced patent application. Please date stamp and return the accompanying postcard to evidence receipt of these documents.

Respectfully submitted,



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Date: September 12, 2005